

_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE ISSUANCE OF AN ADDITIONAL 100 RESTAURANT BEER AND WINE LICENSES STATEWIDE; PROVIDING THAT THE LICENSES ARE TO BE ALLOCATED BASED UPON THE 2004 COLLECTIONS OF THE LODGING FACILITY USE TAX; AND AMENDING SECTION 16-4-420, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 16-4-420, MCA, is amended to read:

"16-4-420. Restaurant beer and wine license. (1) The department shall issue a restaurant beer and wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications and conditions:

(a) in the case of an individual applicant:

(i) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(ii) the applicant is not under 19 years of age;

(b) in the case of a corporate applicant:

(i) in the case of a corporation listed on a national stock exchange, the corporate officers and the board of directors must meet the requirements of subsection (1)(a);

(ii) in the case of a corporation not listed on a national stock exchange, each owner of 10% or more of the outstanding stock must meet the requirements for an individual listed in subsection (1)(a); and

(iii) the corporation is authorized to do business in Montana;

(c) in the case of any other business entity, including but not limited to partnerships, including limited liability partnerships, limited partnerships, and limited liability companies, but not including any form of a trust:

(i) if the applicant consists of more than one individual, all individuals must meet the requirements of subsection (1)(a); and

(ii) if the applicant consists of more than one corporation, all corporations listed on a national stock

1 exchange must meet the requirements of subsection (1)(b)(i) and corporations not listed on a national stock
2 exchange must meet the requirements of subsection (1)(b)(ii);

3 (d) the applicant operates a restaurant at the location where the restaurant beer and wine license will
4 be used or satisfies the department that:

5 (i) the applicant intends to open a restaurant that will meet the requirements of subsection (6) and
6 intends to operate the restaurant so that at least 65% of the restaurant's gross income during its first year of
7 operation is expected to be the result of the sale of food;

8 (ii) the restaurant beer and wine license will be used in conjunction with that restaurant, that the
9 restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be
10 stated on the food bill; and

11 (iii) the restaurant will serve beer and wine from a service bar, as service bar is defined by the
12 department by rule;

13 (e) the applicant understands and acknowledges in writing on the application that this license prohibits
14 the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines
15 and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine
16 license will be used, the activity must be discontinued or the machines must be removed before the restaurant
17 beer and wine license takes effect; and

18 (f) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current
19 seating capacity if the restaurant is operating.

20 (2) (a) A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic
21 beverage may not be considered for a restaurant beer and wine license at the same location.

22 (b) A restaurant that sells its existing retail license may not apply for a license under this section for a
23 period of 1 year from the date that license is transferred to a new purchaser.

24 (3) A completed application for a license under this section and the appropriate application fee, as
25 provided in subsection (11), must be submitted to the department. The department shall investigate the items
26 relating to the application as described in subsections (3)(a) through (3)(d). Based on the results of the
27 investigation and the exercise of its sound discretion, the department shall determine whether:

28 (a) the applicant is qualified to receive a license;

29 (b) the applicant's premises are suitable for the carrying on of the business;

30 (c) the requirements of this code and the rules promulgated by the department are complied with; and

1 (d) the seating capacity stated on the application is correct.

2 (4) An application for a beer and wine license submitted under this section is subject to the provisions
3 of 16-4-203, 16-4-207, and 16-4-405.

4 (5) If a premises proposed for licensing under this section is a new or remodeled structure, then the
5 department may issue a conditional license prior to completion of the premises based on reasonable evidence,
6 including a statement from the applicant's architect or contractor confirming that the seating capacity stated on
7 the application is correct, that the premises will be suitable for the carrying on of business as a bona fide
8 restaurant, as defined in subsection (6).

9 (6) For purposes of this section, "restaurant" means a public eating place where individually priced
10 meals are prepared and served for on-premises consumption. At least 65% of the restaurant's annual gross
11 income from the operation must be from the sale of food and not from the sale of alcoholic beverages. Each year
12 after a license is issued, the applicant shall file with the department a statement, in a form approved by the
13 department, attesting that at least 65% of the gross income of the restaurant during the prior year resulted from
14 the sale of food. The restaurant must have a dining room, a kitchen, and the number and kinds of employees
15 necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space
16 is intended for use as a full-service restaurant. A full-service restaurant is a restaurant that provides an evening
17 dinner meal.

18 (7) (a) (i) Subject to the conditions of subsection (7)(a)(ii), a restaurant beer and wine license may be
19 transferred, upon approval by the department, from the original applicant to a new owner of the restaurant if
20 there is no change of location, and the original owner may transfer location after the license is issued by the
21 department to a new location, upon approval by the department.

22 (ii) A new owner may not transfer the license to a new location for a period of 1 year following the
23 transfer of the license to the new owner.

24 (b) A license issued under this section may be jointly owned, and the license may pass to the surviving
25 joint tenant upon the death of the other tenant. However, the license may not be transferred to any other person
26 or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property
27 upon the death of the owner in this state or in another state.

28 (c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of
29 the department, transfer a restaurant beer and wine license to a new owner.

30 (8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

(i) for a restaurant located in a quota area with a population of 20,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(ii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 50% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(iii) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 40% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105; and

(iv) for a restaurant located in a quota area that is also a resort community, as the resort community is designated by the department of commerce under 7-6-1501(5), if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal to or less than 100% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105.

(b) The number of licenses determined under subsections (8)(a)(i) through (8)(a)(iii) must be increased based upon relative collections of the lodging facility use tax imposed under Title 15, chapter 65. The department shall issue 100 additional licenses statewide. The number of additional licenses issued within counties is the percentage determined by dividing each county's calendar year 2004 lodging facility use tax collections by the total statewide collections of the tax for that year. Licenses allocated to a county must be further allocated in the county between quota areas listed in subsections (8)(a)(i) through (8)(a)(iii) based upon the percentage determined by dividing each quota area's calendar year 2004 collections of lodging facility use tax collections by the total collections of all the quota areas in the county for that year.

~~(b)~~(c) In determining the number of restaurant beer and wine licenses that may be issued under this subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(iii) and (8)(b), the department shall round to the nearer whole number.

~~(e)~~(d) If the department has issued the number of restaurant beer and wine licenses authorized for a quota area under subsections (8)(a)(i) through (8)(a)(iii), there must be a one-time adjustment of one additional license for that quota area.

1 ~~(d)~~(e) If there are more applicants than licenses available in a quota area, then the license must be
2 awarded by lottery as provided in subsection (9).

3 (9) (a) When a restaurant beer and wine license becomes available by the initial issuance of licenses
4 under this section or as the result of an increase in the population in the quota area, the nonrenewal of a
5 restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department
6 shall advertise the availability of the license in the quota area for which it is available. If there are more applicants
7 than number of licenses available, the license must be awarded to an applicant by a lottery.

8 (b) Any applicant who operates a restaurant that meets the qualifications of subsection (6) for at least
9 12 months prior to the filing of an application must be given a preference, and any unsuccessful lottery
10 applicants from previous selections must also be given a preference. An applicant with both preferences must
11 be awarded a license before any applicant with only one preference.

12 (c) The department shall numerically rank all applicants in the lottery. Only the successful applicants
13 will be required to submit a completed application and a one-time required fee. An applicant's ranking may not
14 be sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the
15 intended license advertised by the department or to the number of licenses determined under subsection (8)
16 when there are more applicants than licenses available. The applicant's qualifications for any other restaurant
17 beer and wine license awarded by lottery must be determined at the time of the lottery.

18 (10) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises
19 consumption.

20 (11) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20%
21 of the initial licensing fee. If the department does not make a decision either granting or denying the license
22 within 4 months of receipt of a complete application, the department shall pay interest on the application fee at
23 the rate of 1% a month until a license is issued or the application is denied. Interest may not accrue during any
24 period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or
25 16-4-207. If the department denies an application, the application fee, plus any interest, less a processing fee
26 established by rule, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay
27 the balance of the initial licensing fee. The amount of the initial licensing fee is determined according to the
28 following schedule:

29 (a) \$5,000 for restaurants with a stated seating capacity of 60 persons or less;

30 (b) \$10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or

1 (c) \$20,000 for restaurants with a stated seating capacity of 101 persons or more.

2 (12) The annual fee for a restaurant beer and wine license is \$400.

3 (13) If a restaurant licensed under this part increases the stated seating capacity of the licensed
4 restaurant or if the department determines that a licensee has increased the stated seating capacity of the
5 licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the
6 time of filing the original application and issuance of a license and the applicable fees for the additional seating.

7 (14) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101
8 persons or more may not exceed 25% of the total licenses issued.

9 (15) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming
10 or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a
11 restaurant beer and wine license."

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